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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: **Kil Yong Sung**

Application No.	09/716,573	Art Unit 3743
Filed:	November 17, 2000	Examiner Josiah C. Cocks
For:	**Child-Resistant Utility Lighter**	

APPEAL BRIEF

Real Party in Interest

The real parties in interest are the inventor Kil Yong Sung and the assignee Calico Brands, Inc.

Related Appeals and Interferences

No other appeals or interferences known at this time will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

On March 3, 2004, appellant filed the Notice of Appeal from the Office Action dated December 3, 2003, wherein the examiner made a non-final rejection of claims 16-19, claims 1-15 having been cancelled by appellant at the time of filing of a Request for Continued Examination.

Status of Amendments

No amendment has been filed subsequent to the latest rejection dated December 3, 2003.

Summary of the Invention

Appellant's invention comprises a utility lighter that contains a safety feature incorporating a cam mechanism and a safety button. The unique structure of the cam mechanism

contained in the present invention provides for an optimum amount of safety as it makes it very difficult, if not impossible, for young children to operate the device.

In the preferred embodiment of the invention, the hub of the cam mechanism is fitted unto and supported by the cam-support pin, so that the hub is capable of rotating around the cam-support pin. In order to operate the lighter, the user must press the trigger to create a spark, and release fuel so that a flame can be generated. However, when the user attempts to press the trigger, the trigger will not move significantly at all. This is because the normal operation of the lighter through depression of the trigger is generally impeded by the safety feature.

The invention requires that a safety button, protruding generally from the top portion of the lighter housing shell, be depressed simultaneously with a trigger before a flame can be produced. In addition, the invention requires that the safety button and not necessarily the trigger, be held in its activated state in order for the flame to be sustained. Releasing the safety button after simultaneous activation of both the safety button and the trigger will cause the flame to be extinguished. The claims on appeal are reproduced in the Appendix attached hereto.

Issues

Claims 16 and 17 were rejected under 35 U.S.C. 102(b) as being anticipated by Tasi (U.S. Patent # 5,531,592). Additionally, Claims 16-19 were rejected under 35 U.S.C. 102(e) as being anticipated by Huang (U.S. Patent # 6,050,810). Claim 19 was rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tasi. Claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Tasi, and further in view of Bruhn (U.S. Patent # 4,610,6240). The Examiner also declined the Appellant's request to initiate an interference against Huang (U.S. Patent # 6,050,810) because, according to the

Examiner, claims 16-19 are not patentable, and because claims 16-19 are not directed to the same invention as Huang.

Grouping of Claims

Claims 16-19 stand or fall together.

The Examiner's Rationale

I. The Section 102 Rejection of Claims 16 and 17

The following details the examiner's rational for his rejection of claims 16 and 17 pursuant to 35 U.S.C. 102(b) as being anticipated by Tasi. The Examiner stated that Tasi discloses in Figures 1-3 a lighter substantially as described in the Appellant's invention. The Examiner summarized Appellant's previous arguments regarding anticipation as follows: "Applicant argues on page 3 of the response that applicant's invention and that of Tasi operate differently because applicant's invention discloses that the flame only burns so long as the safety button is depressed whereas Tasi discloses that once a flame is ignited, it will continue to burn even when the safety button is released."

In the rejection, the examiner did not find these arguments persuasive. The examiner felt that even assuming that the applicant's above contention is correct, the examiner does not consider there to be any recited structural differences in applicant's claims that read over the Tasi or Tasi in view of Bruhn.

II. The Section 102 Rejection of Claims 16-19

The examiner's rationale for rejecting claims 16-19 pursuant to 35 U.S.C.102(e) as being anticipated by Huang was stated as follows. The examiner contended that Huang discloses in Figures 1-4 a lighter substantially as described in appellant's claims. The examiner went on to list the features of the lighter in Huang that the examiner felt correspond to the elements of the

appellant's claims. The examiner concluded that the claims of the appellant read on the disclosure of Huang.

III. The Section 103 Rejection of claim 19

The examiner's rationale for rejecting claim 19 pursuant to 35 U.S.C. 102(b) as anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tasi was stated as follows. The examiner focused on the limitation of claim 19 regarding a safety button for rotationally moving the spring mechanism,

The examiner first pointed out the appellant's assertion that claim 19 is not materially distinct from the scope of claim 17 because rotational motion is inherent in the movement of a spring. The examiner further noted that, broadly interpreted, a characterization of "rotationally moving" would be accurately applied to the movement of the spring mechanism (35 and 34) of Tasi.

The examiner went on to reason that when the safety button (36) is slid downwardly, a portion engages the spring (35). The examiner asserted that when safety button (36) is slid downwardly, a portion of the safety button engages the spring (35). Further, the examiner stated that this spring then compresses, and portions of the spring engage in rotational movement to translate the force applied to the spring by the safety button (36) to the lower head portion of the rod (34) in order to engage the fuel release valve of the fuel source. When the safety button is released, the spring (35) functions to urge the safety button back into a non-operational position. The examiner concluded that claim 19 is rejected under Tasi as applied to claim 17, as the spring mechanism of Tasi (34 and 35) would inherently include rotational motion.

IV. The Section 103 Rejection of claim 18

The examiner's rationale for rejecting claim 18 under 35 U.S.C. 103(a) as being unpatentable over Tasi, as applied to claim 16, and further in view of Bruhn is as follows. The examiner stated that Tasi discloses all the limitations of claim 18 except that the fuel release valve is capable of movement on an axis parallel to the axis of movement of the trigger.

The examiner went on to say that Bruhn teaches a lighter in the same field of endeavor as Tasi wherein the lighter of Bruhn has a trigger (11) and valve (7) arranged such that the trigger moves along a first axis that is parallel to the movement of the valve along a second axis. The examiner concluded that therefore, in regard to claim 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the lighter of Tasi to incorporate the trigger and valve arrangement for parallel movement as taught by Bruhn as it is well known in the art that lighter may take varied shapes.

The examiner further pointed out that it is well known in the art that lighters may take varied shapes, such as having an elongated housing and elongated nozzle where the trigger axis and valve axis are parallel. The examiner also stated that this lighter shape, trigger arrangement, and valve arrangement allow a user to ignite a cooker, grill or open fire while maintaining the user's hand a safe distance from the flame, and this shape ensures easy, rapid operation and an esthetic appearance.

The examiner considered the appellant's argument that the combination of Tasi and Bruhn does not teach all the limitations of claim 18. However, the examiner stated that he considers that Tasi teaches all the limitations of claim 18 except for limitations relating to parallel movement of the fuel release valve and trigger. The examiner also considered that the missing limitations to be taught by Bruhn, and that the two references are properly combinable.

V. Refusal of Initiating an Interference

The examiner's reasoning for not initiating an interference against Huang is as follows. The examiner stated that claims 16-19 of this application have been asserted by appellant to correspond to claims 1 and 6 of Huang. The examiner asserted that claims 16-19 are not patentable to the appellant because, according to the examiner, they are anticipated by Tasi or rendered obvious by Tasi in view of Bruhn, and are anticipated by Huang.

Further, the examiner stated that he does not consider claims 16-19 to be directed to the same invention as that of Huang because the claimed lighter of Huang is both structurally and functionally distinct from appellant's lighter. The examiner further asserted that while appellant's claims read on the disclosure of Huang, the claims of Huang are claiming a distinct lighter than that claimed by the appellant. The examiner made two specific arguments, summarized below.

First, the examiner argued that the appellant's "edge" and Huang's "hook" are distinct structures. The examiner noted that Huang claims a lighter having a latch (Huang, item 70) pivotally secured in a lighter housing which functions to engage a trigger to prevent the trigger from being actuated wherein the latch has a distinct structure in the form of a hook (Huang, item 71) to engage the trigger. The examiner then noted that the appellant claims a spring mechanism (Appellant, item 60) having a first portion in the form of a cam-lever edge for locking a trigger of a lighter (Appellant, item 81) and a second portion (Appellant, item 70) for opening fuel-release valve.

The examiner asserted that the appellant does not claim, disclose or suggest a hook associated with any portion of the spring mechanism. According to the examiner, the trigger-locking latch of Huang, and the trigger locking mechanism of appellant, function in a distinct manner from one another. The examiner argued that Huang's hook (Huang, item 731) is

positioned to allow latch (Huang, item 70) to lock the trigger such that the latch is placed in tension to prevent trigger movement, while applicant's edge (Appellant, item 81) engages the trigger (referencing Appellant's Fig. 1, showing first portion 80 engaging stopper portion 110 mounted on the trigger), such that the first portion is placed in compression. The examiner concluded that the hook structure of Huang is critical to his claimed means of preventing trigger actuation, whereas a person of ordinary skill in the art would not be prompted to include such a hook in any portion of appellant's trigger locking mechanism.

Second, the examiner argued that Huang is claiming direct engagement of the knob (60) with the plug (31) and latch (70). The examiner pointed out that Huang claims in claims 1 and 6 that a plug (31) engaging a valve seat (38) and a knob (60) wherein the knob is slidably received in a housing and both engages the plug for disengaging the plug from the valve seat to release a gas flow and engages the latch (70) for releasing the hook to allow trigger movement. The examiner regarded this language in Huang to recite direct engagement of the knob (31) with the plug (31) and the latch (70).

The examiner stated that the while appellant also claims a knob/safety button (120) and plug/valve (31), the appellant's knob/safety button only engages the spring mechanism to move the spring mechanism into an operational and non-operational position whereby the second portion (70) of the spring mechanism opens the fuel release valve and does not claim or disclose that the knob/safety button engages the plug/valve.

The examiner further stated that appellant's argument that it would be obvious to one skilled in the art to interchange the direct engagement means of the valve/plug disclosed in Huang with the engagement means of the spring mechanism disclosed by the appellant, is not persuasive, because there is no proper motivation for this proposed substitution. The examiner

concluded that since Huang's claimed means for releasing the trigger and allowing a gas flow are both structurally and functionally distinct from that claimed by the appellant, an interference cannot be initiated based upon these claims.

Argument

I. The Section 102 Rejection of Claims 16 and 17

The examiner's rejection of claims 16 and 17 under 35 U.S.C. 102(b) as being anticipated by Tasi (U.S. 5,531,592) is respectfully traversed. For anticipation under §102, the MPEP § 706.02(a) requires that "the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." (MPEP, page 700-21.) The Tasi reference fails to teach every aspect of the appellant's claimed invention. Thus, Tasi does not anticipate the appellant's invention.

The examiner has stated that he does not consider there to be any recited structural differences in applicant's claims that read over the Tasi or Tasi in view of the Bruhn. The appellant respectfully disagrees with that statement and contends that appellant's claims recite structural differences that do read over the Tasi reference alone, or in combination with Bruhn.

Appellant's Claims Recite that the Fuel Release Valve Closes When the Safety Button is Released

The appellant has claimed that the fuel release valve closes when the safety button is released. This is recited in Applicant's claims. " A safety button [moves] the spring mechanism from the nonoperational to operational position, ... the spring mechanism being urged into the nonoperational position, ... the second portion [of the spring mechanism] opens the fuel release

valve when the spring mechanism is in the operational position, ... [the] fuel release valve being spring loaded so as to be urged in the closed position..." (*See* Claims 16 and 17.)

It is well known that to ascertain the true meaning of the claims, it is appropriate to consider the claim language, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979-980, 34 U.S.P.Q.2d 1321, 1329-1330 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370, 38 U.S.P.Q.2d 1461 (1996); *General Am. Transp. Corp. v. Cryo-Trans, Inc.*, 93 F.3d 76, 769, 39 U.S.P.Q.2d 1801, 1803 (Fed. Cir. 1996), *cert. Denied*, 520 U.S. 1155 (1997).

The claimed operation of the spring mechanism is clearly defined in the specification, requiring that once the safety button is no longer pressed, the fuel release valve closes due to the force of the spring mechanism. For example, the specification states:

> "Once a flame has been generated, it can be sustained only if fuel continues to be supplied. As explained above, this will only occur if the safety button (120) is held in position and not released after a flame has been generated. Simply holding the trigger (100) in the activated state will not sustain the flame." (Specification, page 18.)

The specification also states: "Once the flame is no longer needed, the safety button (120) is released. This allows both the cam lever (80) and the fuel release lever (70) to return to their stationary positions under the urging influence of the return spring (90)." (Specification, pages 18-19.) There is absolutely no language in appellant's specification that leaves open a possibility that the fuel valve can remain open once the safety button is released, and no longer pressed by a finger. In fact, the specification discloses that the fuel valve can only remain open as long as there is continuous pressure on the safety button. Thus, the meaning of the appellant's claims is clear – the structure of the spring mechanism is such that the fuel-release valve can only remain open as long as the safety button is depressed by a finger.

The Tasi Safety Button Does Not Have to Be Depressed by a Finger Simultaneously With Depressing the Fire Button in Order to Keep the Fuel Valve Open

The examiner has argued that "the spring mechanism of Tasi functions to urge the safety button into a closed position." The examiner is correct in asserting that the spring mechanism of Tasi functions to urge the safety button closed. However, in Tasi, the safety button cannot be closed so long as the fire button is depressed. In Tasi, after the safety button is moved into the operational position, so long as the fire button is depressed the gas continues to be emitted and the flame continues to burn, regardless of the fact that the safety button is not depressed by a finger.

Thus, contrary to the examiner's assertion, there is a very important structural difference between the appellant's claimed invention and that of Tasi – the appellant's invention is constructed in such a way that the safety button is required to be continuously pushed while the trigger is pressed, in order to generate a flame. This feature represents a further step in safety as compared to the Tasi disclosure. The Tasi safety button only helps prevent ignition. On the other hand, the appellant's invention not only helps prevent accidental ignition, but also, prolonged accidental burning of the flame should ignition occur. This is because the appellant discloses a fuel release valve that only remains open when the safety button is depressed.

Tasi Does Not Disclose that the Fuel Valve is Urged Into a Closed Position by a Spring

In all of the office actions, the examiner has stated that Tasi discloses a fuel-release valve urged into a closed position. However, the examiner has not pointed out to the appellant a part number in Tasi that he regards as a fuel-release valve. More importantly, the examiner has not

pointed out to the appellant the disclosure in Tasi that shows that the fuel-release valve in Tasi is urged into a closed position by a spring. Tasi discloses the following:

> "[A] connecting tube assembly 33 is comprised of a connector 331, an inner connecting tube 332, and an outer connecting tube 333. The connector 331 has a top output end 3313 inserted through a through hole 46 on the mount 4 from the bottom and connected to the nozzle tube 32, a bottom input end 3311 connected to the inner connecting tube 332 at the top, and a collar 3312 fitted into and affixed to the outer connecting tube 333 at the top. The inner connecting tube 332 has an opposite end connected to the fuel gas nozzle of the cigarette lighter. Therefore, when the slide switch 36 is moved down to the operative position, the push button of the cigarette lighter is depressed causing the fuel gas nozzle of the cigarette lighter opened for letting a the fuel gas be driven out of the fuel gas container of the cigarette lighter" (Col. 2, lines 29-43.)

As far as the appellant can see, Tasi does not disclose a "fuel-release valve being spring loaded so as to be urged into the closed position," as the appellant claims not only in claims 16 and 17, but also in claims 18 and 19 as well. Tasi simply does not disclose this element of the appellant's invention. Tasi's fuel gas nozzle is not described to be spring loaded so as to be urged into the closed position. Thus, because the Tasi reference fails to teach every aspect of the appellant's claimed invention, the Tasi reference does not anticipate the appellant's invention under 35 U.S.C. 102(b).

II. The Section 102 Rejection of Claims 16-19

The examiner has rejected of claims 16-19 under 35 U.S.C. 102(e) as being anticipated by Huang (U.S. 6,050,810). An interference is respectfully requested to determine this issue. The reasons why appellant believes that the declaration of an interference is proper are recited in detail in Section V below and are incorporated herein by reference.

III. The Section 103 Rejection of claim 19

The examiner's rejection of claim 19 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Tasi is respectfully traversed. The appellant believes that this invention as

presently claimed falls outside of the subject matter indicated, taught, or suggested by Tasi.

According to MPEP § 706.02(j):

> "[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

Tasi Does Not Teach All of the Claim 19 Limitations

The appellant believes that Tasi does not teach all of the claim 19 limitations, and thus cannot serve as 35 U.S.C. § 103(a) reference to the appellant's invention.

In making his rejection, the examiner points to certain language in the appellant's response, filed May 8, 2002, in which the appellant asserted that claim 19 is not materially distinct from scope of claim 17 because rotational motion is inherent in the movement of a spring. The examiner then noted that, broadly interpreted, a characterization of rotationally moving is accurately applied to the movement of the spring mechanism (34 and 35) of Tasi. As shown above, the examiner's reasoning is as follows:

> "When safety button (36) is slid downwardly a portion engages the spring (35). This spring then compresses, and portions of the spring engage in rotational movement to translate the force applied to the spring by the safety button (36) to the lower head portion of rod (34) in order to engage the fuel release valve of the fuel source. When the safety button is release the spring (35) functions to urge the safety button back into a non-operational position. Therefore, claim 19, is rejected under Tasi ... as the spring mechanism of Tasi (items 34 and 35) would inherently include rotational motion." (Office Action, December 3, 2003.)

The appellant would like to first point out that the quotation from the May 8, 2002 response was taken out of context by the examiner. Although the spring mechanism as disclosed by the appellant clearly has a rotational movement, Tasi's disclosure does not teach a spring

mechanism utilizing such rotational movement. The torsion generated by the Tasi disclosure is distinct from that generated by the rotational movement of the appellant's invention.

Tasi Does Not Disclose or Suggest a Spring Mechanism that Utilizes Rotational Movement

The appellant would like to respectfully disagree with the examiner's conclusion that a characterization of "rotationally moving" is accurately applied to the movement of the spring mechanism (34 and 35) of Tasi. Tasi discloses,

> " an upright pressure rod 34 having a bottom end stopped at the bush button of the cigarette lighter ... and a top end inserted through a hole 361 on the slide switch 36 and retained in place by a clamp 352, a "coil spring 35 mounted around the upright pressure rod 34 and retained between the push button of the cigarette lighter and the slide switch 36, and a retainer spring 37 fastened to the mount 4 and having two opposed projections 371 for holding the slide switch 36 between the operative position (ON) and the non-operative (OFF) position." (Col. 2, lines 19-29.)

Tasi further states that "when the slide switch 36 is moved down to the operative position, the push button of the cigarette lighter is depressed causing the fuel gas nozzle of the cigarette lighter opened." (Col. 2, lines 38-40.)

As can be seen from the Tasi disclosure, the pressure rod (34) goes through a hole in the slide switch (36) and is retained in place by a clamp. Since the pressure rod is attached to the slide switch with the clamp, when the slide switch is moved down, the pressure rod moves downward not because of the movement of the spring (35), but due to the external force applied to the slide switch in moving it down. Further, while the spring does compress vertically (not rotationally) when the slide switch is moved down, the spring does not apply any force to the pressure rod, but instead simply biases the slide switch in the upward direction. Thus, the appellant believes that the examiner's analysis that "portions of the spring engage in rotational

movement to translate the force applied to the spring by the safety button (36) to the lower head portion of rod (34)" is incorrect.

Claim 19 is Not Materially Distinct From the Scope of Claim 17

The appellant has previously stated, and the examiner has agreed, that claim 19 is not materially distinct from the scope of claim 17. Claim 19 contains a limitation not present in claim 17, that the safety button rotationally moving the spring mechanism. The appellant has shown that Tasi does not anticipate claim 17 under 35 U.S.C. 102. (*See* Argument, I.) Furthermore, the appellant has shown in the above paragraphs of this section that Tasi safety button does not move the spring mechanism using rotational motion. Tasi simply does not disclose rotational motion of the spring mechanism, as does the appellant. Thus, Tasi does not anticipate claim 19 under 35 U.S.C. 102(b), and does not make claim 19 obvious under 35 U.S.C. 103(a).

IV. The Section 103 Rejection of Claim 18

The examiner's rejection of claim 18 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Tasi, as applied to claim 16, and further in view of Bruhn, is respectfully traversed. The appellant believes that this invention as presently claimed falls outside of the subject matter indicated, taught, or suggested by the combination of Tasi and Bruhn. Referring back to the MPEP § 706.02(j) criteria for obviousness, stated above, to establish a prima facie case of obviousness, the examiner must shown that the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Tasi Fails to Disclose All the Limitations of Claim 18, Not Counting the Parallel Axis of Movement of the Trigger and the Fuel Release Valve Limitation

The examiner has stated that Tasi discloses all the limitations of claim 18, except that the fuel release valve is capable of movement on an axis parallel to the axis of movement of the trigger. The appellant respectfully disagrees with that statement. Claim 18 contains all of the limitations of claim 16, adding a further limitation regarding the movement of the fuel release valve being on an axis parallel to the axis of movement of the trigger.

The appellant has already traversed examiner's 35 U.S.C. 102 rejection of claim 16 based on Tasi, and appellant incorporates all of the arguments of Section I above as if stated herein. Because Tasi fails to teach every aspect of the invention claimed in claim 16, it would necessarily follow that Tasi fails to teach every aspect of the invention claimed in claim 18, since claim 18 contains all of the limitations of claim 16.

The appellant is not disputing that Bruhn teaches a lighter in which the trigger and the valve are arranged such that the trigger moves along a first axis that is parallel to the movement of the valve along a second axis. However, even assuming that Bruhn may be combined with Tasi to disclose that the fuel release valve is capable of movement on an axis parallel to the axis of movement of the trigger, since Tasi fails to disclose the other limitations of claim 18 (as discussed in Section I above), Tasi in combination with Bruhn fails to teach all of the claim 18 limitations. Consequently, as neither Tasi nor Bruhn teaches every aspect of claim 18, either singly or taken together in any reasonable combination, the appellant believes that claim 18 is allowable over Tasi in view of Bruhn.

V. Refusal of Initiating an Interference

The appellant respectfully disagrees with examiner's decision that the declaration of an interference is improper for the reasons stated below.

Claims 16-19 Are Patentable to the Appellant Over Tasi and Over Tasi in View of Bruhn

The examiner has stated that claims 16-19 are not patentable to the appellant because the claims are anticipated by Tasi or rendered obvious by Tasi in view of Bruhn, and are anticipated by Huang. However, the appellant has traversed in detail all of the examiner's rejections of claims 16-19, as can be seen in the above sections. Therefore, it is the appellant's position that claims 16-19 are patentable and that the appellant thus meets this prerequisite for interference of 37 C.F.R. §1.606. Thus, the appellant requests initiation of an interference with Huang to resolve the rejection of claims 16-19.

Appellant's Application and the Huang Patent Were Filed Within the Statutory Period of Each Other

For a 35 U.S.C. 102(e) rejection, a patent may act as prior art as of the date it was filed in the United States. The Huang patent issued on April 18, 2000, having been filed on March 22, 1999. The appellant's application claims priority to the non-provisional U.S. Patent Application Serial No. 09/507,100, filed on February 17, 2000, which in turn claims priority to a provisional U.S. Patent Application Serial No. 60/126,326, filed March 26, 1999.

The effective filing dates of the Huang patent (March 22, 1999) and the appellant's provisional application (March 26, 1999) are within the statutory three months of each other, as required by the rules for initiating an interference. *See* 37 C.F.R. § 1.608(a). Furthermore, the appellant's invention was conceived and reduced to practice in the United States before the filing date of the Huang patent. Huang, who is a Taiwanese citizen, and who invented in Taiwan, does

not have any right to claim a date earlier than that of his Unites States filing date. *See* 35 U.S.C. 104.

The Appellant and Huang are Claiming the Same Patentable Invention

An interference is proper when the prospective parties to the interference are claiming "the same patentable invention." 37 C.F.R. § 1.603. The examiner has stated that an interference cannot be initiated because claims 16-19 are not directed to the same invention as in Huang. The examiner has asserted that the lighter of Huang is both structurally and functionally distinct from appellant's lighter. Specifically, the examiner has stated that appellant's edge and Huang's hook are district structures.

Appellant's Cam-Lever-Edge and Huang's Hook are Obvious in View of Each Other

The "same patentable invention" may be defined as using an anticipation/obviousness standard. 37 C.F.R. § 1.601(n). In this instance, the Huang invention and the appellant's invention are at the very least obvious in light of one another. First of all, the appellant's cam-lever-edge performs exactly the same function as Huang's hook.

Second, in the appellant's invention, just like in Huang, the edge or hook abuts the trigger to prevent it from moving. In Huang, a safety knob is connected to a pivotally secured latch (70) containing a limb (73) having an edge in the form of a hook (731), which prevents the movement of the trigger. In appellant's invention, essentially a safety button is connected to a pivotally secured hub (60) containing a cam lever (80) having a flat edge (81), which prevents the movement of the trigger. It should be evident that the edge of the limb in Huang, although in the shape of a hook, could have been simply called an edge.

Whether by tension or compression, Huang's hook and appellant's edge accomplish the identical purpose and it would be obvious to one skilled in the art to interchange the two

mechanisms. Further, the appellant respectfully disagrees with examiner's position that the hook structure is critical to his claimed means of preventing trigger actuation, because a limb having a shape similar to appellant's cam-lever, if attached to Huang's pivotally secured latch, could also perform the same function of preventing trigger movement.

Appellant's Safety Button Operation and Huang's Knob Operation are Obvious in View of Each Other

The examiner has also stated that contrary, to appellant's claimed invention, Huang is claiming direct engagement of the knob (60) with the plug (31) and the latch (70). Again, in this instance, the Huang invention and the appellant's invention are at the very least obvious in light of one another.

The examiner states that in Huang, the knob (60) engages the latch (70) for releasing the limb (73) and the limb's hook (731) to allow trigger movement. What the examiner fails to mention is that the knob (60) has an extension (64) that is extended downward from the knob (60). (Col. 2, lines 20-22.) It is in fact the extension (64) that engages the latch and not the knob (60). (Col. 2, line 65 – Col. 3, line3.) Similarly, the appellant's knob/safety button engages the hub (60) for releasing the cam-lever edge (81) to allow trigger movement, but does so through its connection with the cam-lever (80). In other words, the cam-lever (80) is the extension of the safety button that engages the hub (60). Accordinlgy, it would be obvious to one skilled in the art to interchange the two means of engaging the latch/hub, described in Huang and appellant's invention.

Examiner also states that in Huang, a plug (31) engaging a valve seat (38) and a knob (60) wherein the knob is slidably received in a housing and both engages the plug for disengaging the plug from the valve seat to release a gas flow. What the examiner fails to

mention is that the plug (31) is slidably received in the tube (40) and that a sleeve (50) is slidably engaged on the tube (40) and slidably received in the orifice (63) of the knob (60). In fact, Huang's knob (60) engages the plug (31) via a mechanism comprising the sleeve (50) and the tube (40). In appellant's invention, the safety button (120) engages the fuel valve via the spring mechanism comprised of the hub (60) connected to the fuel release lever (70). Accordingly, it would be obvious to one skilled in the art to interchange the two means of engaging the fuel release valve/plug, described in appellant's invention and Huang.

Claims 16-19 are Anticipated by Huang According to the Examiner

The examiner has stated that claims 16-19 of appellant's invention are anticipated by Huang. Furthermore, because appellant's claims 16-19 are obvious in view of Huang, as shown above, the appellant's invention is "the same patentable invention" as the invention in Huang according to 37 C.F.R. § 1.601(n). Thus, an interference must be initiated upon claims 16-19.

Summary

For the foregoing reasons, appellant respectfully requests that the examiner's findings of anticipation and obviousness with respect to all of the claims be overturned, and that an interference be initiated against the Huang patent.

August 3, 2004

Respectfully Submitted,

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Appendix

The following claims are subject to this appeal:

16. A lighter comprising:

a lighter housing,

a fuel tank, located within the lighter housing, for holding the fuel,

a piezoelectric unit for creating a spark,

a trigger, slidably mounted in the lighter housing, for activating the piezoelectric unit, the trigger having a stopper tab,

a fuel-release valve being spring loaded so as to be urged into the closed position,

a spring mechanism having a nonoperational position, an operational position, a first portion and a second portion, the first portion locks the trigger when the spring mechanism is in the nonoperational position, the second portion opens the fuel-release valve when the spring mechanism is in the operational position, the spring mechanism being urged into the nonoperational position, and

a safety button for moving the spring mechanism from the nonoperational position to the operational position.

17. A lighter comprising:

a lighter housing,

a fuel tank, located within said lighter housing for holding fuel,

a piezoelectric unit for creating a spark,

a trigger, slidably mounted in the lighter housing for activating the piezoelectric unit, said trigger having a stopper tab,

a fuel-release valve being spring-loaded so as to be urged into the closed position,

a spring mechanism having a non-operational position, an operational position, a first portion and a second portion, said first portion locks said trigger by interfering with said stopper tab when said spring mechanism is in the non-operational position, said second portion opens said fuel-release valve when said spring mechanism is in said operational position, said spring mechanism being biased into said non-operational position, and

a safety button for moving said spring mechanism from said non-operational position to said operational position by moving said first portion of the spring mechanism out of interference with said trigger to allow depression of said trigger and activation of said piezoelectric unit.

18. A lighter comprising:

a lighter housing,

a fuel tank, located within the lighter housing, for holding the fuel,

a piezoelectric unit for creating a spark,

a trigger, slidably mounted in the lighter housing along a first axis, for activating the piezoelectric unit, the trigger having a stopper tab,

a fuel-release valve being spring loaded so as to be urged into the closed position, said fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger,

a spring mechanism having a nonoperational position, an operational position, a first portion and a second portion, the first portion locks the trigger when the spring mechanism is in

the nonoperational position, the second portion opens the fuel-release valve when the spring mechanism is in the operational position, the spring mechanism being urged into the nonoperational position, and

a safety button for moving the spring mechanism from the nonoperational position to the operational position.

19. A lighter comprising:

a lighter housing,

a fuel tank, located within said lighter housing for holding fuel,

a piezoelectric unit for creating a spark,

a trigger, slidably mounted in the lighter housing for activating the piezoelectric unit, said trigger having a stopper tab,

a fuel-release valve being spring-loaded so as to be urged into the closed position,

a spring mechanism having a non-operational position, an operational position, a first portion and a second portion, said first portion locks said trigger by interfering with said stopper tab when said spring mechanism is in the non-operational position, said second portion opens said fuel-release valve when said spring mechanism is in said operational position, said spring mechanism being biased into said non-operational position, and

a safety button for rotationally moving said spring mechanism from said non-operational position to said operational position by moving said first portion of the spring mechanism out of interference with said trigger to allow depression of said trigger and activation of said piezoelectric unit.